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| **Order Decision** |
| Site visit made on 10 September 2024 |
| **by Nigel Farthing LLB** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 October 2024** |

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| **Order Ref: ROW/3329137** |
| * This Order is made under Sections 257 and 261 of the Town and Country Planning Act 1990 and is known as the Wiltshire Council Order for the Temporary Diversion of Footpath No.18 (Part) and Bridleway No.5 (Part) Compton Bassett. |
| * The Order is dated 31 May 2023 and proposes to temporarily divert the public rights of way shown on the Order plan and described in the Order Schedule. |
| * There were five objections outstanding when Wiltshire Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed** |
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Procedural Matters

1. I undertook an unaccompanied site inspection during the afternoon of Tuesday 10 September 2024
2. No-one requested an inquiry or hearing into the Order. In arriving at my decision, I have taken into account all of the written representations.
3. In this decision I have found it useful to refer to the various points annotated on the Order map. For ease of reference a copy of the map is attached hereto.

The Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 (the 1990 Act) provides for an Order to be made authorising the stopping up or diversion of a footpath or bridleway if it is necessary to do so in order to enable development to be carried out in accordance with planning permission already granted under Part III of the same Act. The section further provides for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted.
2. Section 261 of the 1990 Act provides that where the stopping up or diversion of a footpath or bridleway is required for the purpose of enabling minerals to be worked by surface working, and the footpath or bridleway can be restored after the minerals have been worked, to a condition not substantially less convenient to the public, an order can be made providing for the stopping up or diversion of the footpath or bridleway for such period as may be prescribed, and for its restoration at the end of that period.
3. The Order relates to the proposed temporary diversion of a public footpath and a bridleway to facilitate the implementation of planning consent for the extraction of sand and gravel from the land over which the affected parts of the public rights of way are recorded.
4. The Order seeks to temporarily stop up that part of Footpath 18 (FP18) between points A and B on the Order map and that part of Bridleway 5 (BR5) between points E to B to D and to create temporary alternative routes between points A and C and between D and F.
5. Applying the provisions of sections 257 and 261 of the 1990 Act, there are three issues to be determined. First, whether the Order is necessary to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act (the necessity test). Second, applying the principles set out in Vasiliou v SST [1991] All ER 77, whether any disadvantages flowing from the Order are of such significance as to outweigh the benefits of the development (the merits test). Third, whether the affected public rights of way can be restored to a condition not substantially less convenient to the public.
6. The merits test involves consideration of the advantages and disadvantages of confirming the Order. In doing so the merits of the grant of planning permission cannot be reopened. It follows that objections raising points objecting to the principle of development should be given no weight at all. Instead, the public benefits of the development are to be accepted and acknowledged given the grant of planning permission. Further, as is pointed out in Circular 1/09 at paragraph 7.15, there must be good reasons to justify any decision not to confirm the Order. For application of the merits test to lead to a conclusion that the Order ought not to be confirmed, it would be necessary to find that any disadvantages flowing from the Order are of such significance that they outweigh the benefits of the development.

Reasons

Site visit

1. I visited the site on Tuesday 10 September. The day was overcast and blustery. There had been recent heavy rain, and the ground was unseasonably wet with standing water in places.
2. I walked the affected public rights of way, beginning at point E. I first walked BR5 via point B to point D and beyond. The section of the route alongside the cottages is a well-maintained track serving as a vehicular access to the residential properties. Beyond the curtilage of the cottages the route is less well maintained and is an improved track with a central grass strip.
3. At point B BR5 turns left while FP 18 continues straight on. I continued on BR5 to point D. The character of the track remained similar, but the surface worsened with some wet and muddy patches. Here the track has the appearance and character of an ancient lane, with ditches on each side and established hedges beyond the ditches.
4. There is no indication of where point D is on the ground, and I made an assessment by reference to field boundaries. The proposed route D to F passes across what is currently an arable field which at the time of my visit was growing a mature crop of maize. Because of this it was not possible for me to walk through the field, but I could identify the approximate line of the proposed route which is over a level and unremarkable field.
5. On returning to point B, I walked FP18 to point A and beyond. The path is along a grassy field margin and alongside an established hedge. The path is level to start with but then descends to point A which is in a valley with a small stream. On reaching A I tried to identify the route of the proposed temporary diversion but there were no features to indicate precisely where this will be. The first section of the proposed route is through long grass and scrub before turning to head in a direct line to point C. The proposed path again crosses an arable field also growing maize, so again I was unable to walk the route. It is however over another unremarkable field. The gradient rises away from the valley, but then is level over a second field to point C.
6. On returning to Point E, I walked along the track (CBAS4) to point F. Again, it was difficult to identify this precisely, but I was able to estimate by reference to the boundaries of the property opposite. At the point where the proposed route meets the track there is presently a hedge which I did not attempt to walk through. Beyond is the field of maize I had seen from point D.
7. For completeness I walked to Point C where the proposed footpath will join the road and was able to view over the field towards point F. I could see no obstructions or other impediments to use of the proposed route.

The Necessity Test

1. Planning permission for the mineral extraction at this site was granted initially on 5 September 1956 under Ref: 3809/NW. A detailed permission with conditions was then granted on 14 March 2022 under Ref:16/05464/WCM (the permission).
2. The rights of way proposed to be temporarily diverted by this Order are within the area to which the permission relates (with the exception of a short section of BR5 leading north from point E which, if not diverted would be a cul-de-sac serving no purpose). These rights of way will be directly affected by the implementation of the permission.
3. The Quarries Regulations 1999 and the approved code of guidance provide that, for health and safety reasons, public rights of way should normally be diverted around quarries.
4. It is a condition of the permission that extraction from the site will cease within 6 years of the notified date of commencement and within 12 months of the permanent cessation of mineral extraction.
5. One objector asserts that the existing routes are ‘perfectly suitable and useable, there is no need to move them’. The approved plans demonstrate that the existing rights of way pass directly over the area to be excavated. To the extent that the objector is seeking to re-open the grant of permission, that is not a factor that I am able to take into account.
6. I am satisfied that if the permission is to be implemented it is necessary that the affected rights of way be diverted. As the permission is for a limited period of time, I am also satisfied that temporary diversion of the affected routes is appropriate.

The merits test

1. A number of objections have been made to confirmation of the Order. These primarily fall into one of two categories, those relating to the suitability of or need for the proposed diversion routes and those relating to the loss of the existing historic routes.
2. My task is to assess whether any disadvantages flowing from this Order are of such significance as to outweigh the benefits.
3. I am required to accept that the granting of permission confers a public benefit, and it is not permissible for me to look behind the reasons for or merits of that permission.
4. One objector claims the diverted route will be unsuitable because of ground conditions and unattractive because of its proximity to a working quarry. My visit, which was in early September, testified to the potentially wet condition of the existing route. However, it is a condition of the permission that the diversion routes are to be created to the reasonable satisfaction of the Council and this will ensure that a suitable temporary route is available. The fact that the proposed routes are close to the quarry site is necessary to preserve the connectivity of the network. The quarry is required to be fenced for safety reasons and a bund will mitigate noise and other potential nuisance emanating from the site.
5. Objection was made on the basis that, although recorded as a bridleway, BR5 may in fact have public vehicular status. Although this is yet to be proved, the prospect of higher status being established is recognised in that the proposed temporary route D to F will have the status of a restricted byway, thus accommodating any traffic that would have an entitlement to use the route if higher status is established and ensuring no potential detriment to the public over that issue.
6. Various objections concern the loss of the established and historic track that forms BR5. I have commented from my site visit that the section of BR5 between points B and D has the features and character of an ancient lane. I understand why local people would wish to preserve the lane, but that is not a matter I am entitled to take into account under this procedure. Planning permission has been granted for the use of this site, which includes the historic section of BR5, for the extraction of minerals. The permission was granted only after a formal process of consultation and objection. The present process is concerned with the implementation of that permission and cannot be used to subvert it.
7. During the process various objectors have made reference to the criteria which would apply to a diversion order made under Section 119 of the Highways Act 1990. I understand why the objectors would like to apply these criteria, but they are not relevant to an order made under the 1990 Act.
8. Overall, I recognise that there are some disadvantages that will follow from the diversion of the routes. Specifically certain journeys will be slightly longer and the character of the land over which the diverted routes pass will, in places, be different. The surface of the diverted routes may, in parts, be different to the existing routes but this is not necessarily disadvantageous and in any event it is a ccondition that the temporary routes will be suitable for public use.
9. Balanced against any perceived disadvantages, the function of the routes and the connectivity they provide will be unaffected by the diversion. Furthermore, I recognise that the diversion will be temporary such that the quarry must cease operation within 6 years of commencement and the original routes are to be restored and reinstated within 12 months of cessation of mineral extraction. Having regard to these factors I conclude that there are no disadvantages of sufficient significance to outweigh the benefit of the Order.

Convenience of the restored route

1. Section 261 of the 1990 Act requires the routes to be restored ‘to a condition not substantially less convenient to the public’.
2. The permission is subject to a condition (condition 31 of 16/05464/WCM) requiring the existing footpath and bridleway to be restored to the reasonable satisfaction of the Council and at the cost of the landowner. This condition is repeated in paragraph 4 of the Order.
3. Objection is made that the reinstated route will be unsuitable for use because of differences of level between the infilled quarry and the surrounding land. I note however that it is a condition of the permission that the site shall be restored in accordance with submitted plans and these plans are required to show ‘how the unworked land will marry with the lower restored area to accommodate the reinstated bridleway and footpath’. I am satisfied that this condition adequately addresses the concern about this aspect of the suitability of the proposed route.
4. I conclude that the conditions attaching to the permission and embodied in the Order will ensure that the restored public bridleway and footpath will be put in a condition not substantially less convenient to the public.

**Conclusion**

1. For the purposes of confirming an order made under sections 257 and 261 of the 1990 Act I am required to be satisfied that the diversion of the public rights of way is necessary for the permission to be implemented, that the proposed diversion routes are suitable and that the restored routes will not be substantially less convenient to the public. These are the only factors material to my decision.
2. Having regard to all relevant factors, I conclude that each of the tests is met and that it is expedient for the Order to be confirmed. In reaching this conclusion I have had regard to the findings I have outlined above. In my judgement the factors supporting confirmation outweigh the matters raised by way of objection.

**Overall Conclusion**

1. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

Nigel Farthing

Inspector

